



# Panel 3 on Distinguishing Reasonable Accommodation, Special Measures and Obligations under Accessibility

DAY OF GENERAL DISCUSSION ON THE RIGHT TO EQUALITY AND  
NON-DISCRIMINATION (ARTICLE 5)

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## Equality & Non-Discrimination

### Art 5 (3)

State to ensure provision of reasonable accommodation

RA

- Individualised/ Personalised response
- Immediate realisation if no undue burden to accommodating entity

### Art 5 (4)

Specific measures to accelerate or achieve de facto equality of persons with disabilities

Special Measure

- Temporary measure with specific goals (not considered discrimination) eg quota/ affirmative action

### Art 9

Access to physical environment, ICT, and facilities and services open or provided to the public

Accessibility

- Policy/ implementation programme
- Ex ante duty before receiving individual request
- To be realised progressively but not subject to conditionality of burden

## Decision 15/2012

- Submission to the Constitutional Court from the Ombudspersons on constitutionality of a provision in the Act on Administration of Judges, disqualifying judicial candidates on grounds of “...having a body or mind unfit to be a judge”.
- The case originated from the disqualification of a judicial candidate with polio conditions.
- The Court noted: 1) the 2007 constitutional provision barring discrimination on the ground of ‘disability’ (specifically added in 2007 Constitution, identically maintained in the 2017 Constitution) and 2) the binding effect of the CRPD to Thailand from August 2006, in particular Articles 4 (general obligations) and 5 (equality and non-discrimination).

## Decision 15/2012

- Striking down the provision as unconstitutional, the Court reasoned as follows:  
“the said provision allows for the exercise of discretion that is overbroad, that may result in unfair discrimination on persons with disabilities... the exercise of discretion of the Judicial Commission in vetting the qualifications of applicants results in the denial of the rights of persons with disabilities from the very initial stage, without providing them opportunities to sit for the examination similar to those with no disabilities and precluding their opportunities to demonstrate their capabilities. Taking into account the fact that the core mandate of judges is to hear and decide cases with fairness according to the Constitution and the law and they must sit in a specified quorum, it follows that disabilities do not constitute an obstacle to the discharge of judicial duty in rendering justice to those involved. ... The provision contravenes the right of persons with disabilities to work on an equal basis with others according to the (CRPD)”

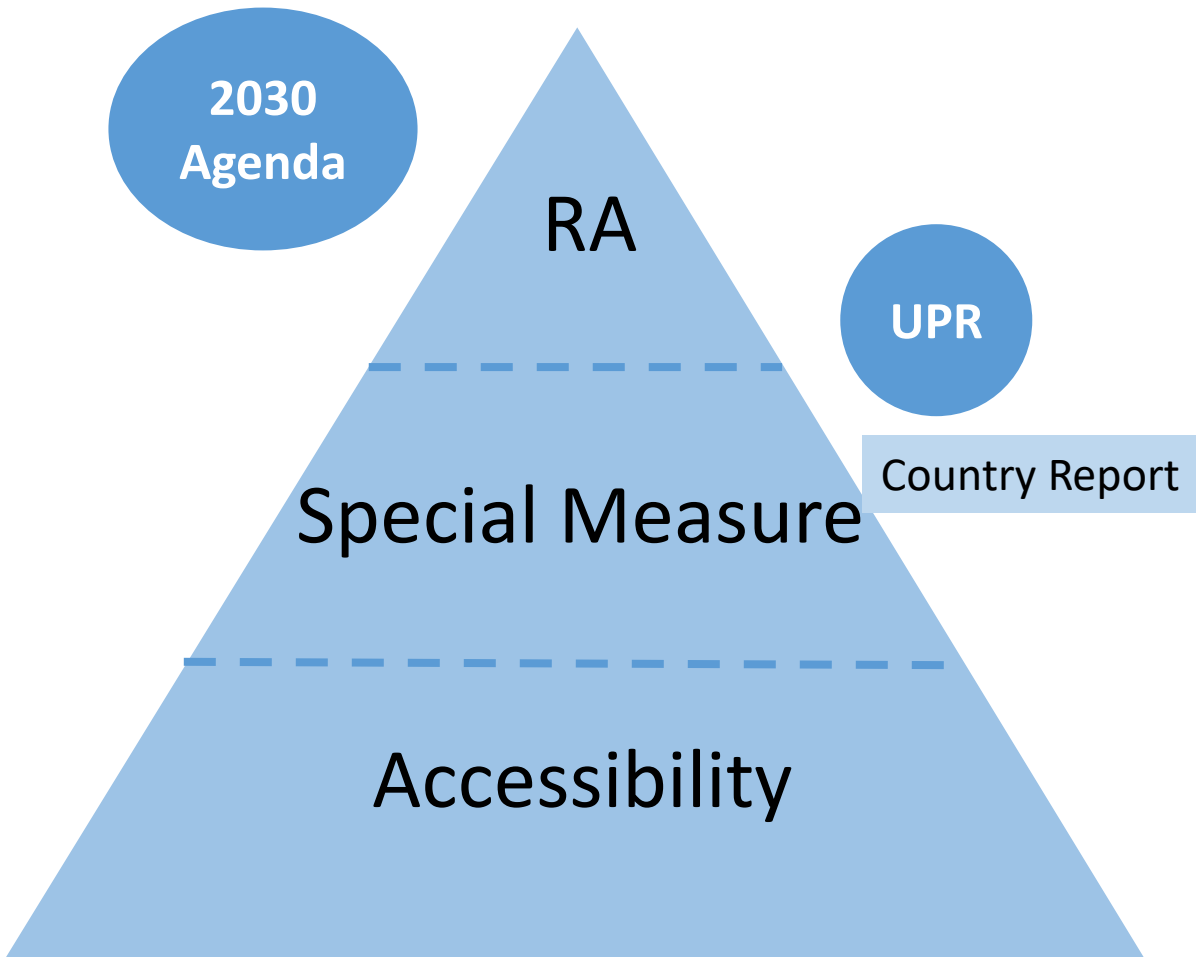
## Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific (2012)

### Goal 2 Promote participation in political processes and in decision-making

Target 2.B Provide reasonable accommodation to enhance the participation of persons with disabilities in the political process

#### Core indicators

- 2.1 Proportion of seats held by persons with disabilities in the parliament or equivalent national legislative body
- 2.5 Proportion of cabinet positions held by persons with disabilities at the national level
- 2.6 Proportion of supreme court judges who are persons with disabilities



- Awaiting individual requests/challenges for accommodation (Can persons with different disabilities become judges? What 'reasonable' accommodation must be provided?)  
[See CRPD Communication No 11/2013 (Sign language for jury with disabilities), No 5/2011 (personal assistant for job applicant with severe sight impairment)]
- Affirmative action/ quota on number of judges with disabilities?
- Universal design of court building (ramps/ lifts/ signage)
- Use of ICT system (including audio system) for enhanced accessibility

Elimination of laws/ policies/ practices/ measures that cause/perpetuate direct and indirect discrimination on persons with disabilities